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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,480	08/23/2003	David H. Miller	PC-1419	9448

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LAW OFFICES OF BRIAN S STEINBERGER  
101 BREVARD AVENUE  
COCOA, FL 32922

EXAMINER

LHYMN, EUGENE

ART UNIT PAPER NUMBER

3727

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/646,480

Applicant(s)

MILLER, DAVID H.

Examiner

Eugene Lhymn

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 17-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8/23/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Inventions corresponding to claims 1-16 and 17-20 are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the independent process claim 17 calls for a 24" wide tool head, which is not a limitation set forth in the independent product claim 1, ergo proving the two inventions to be distinct since the process for using the product as claimed can be practiced with another materially different product.
2. During a telephone conversation with Brian Steinberger on 9/28/05, a provisional election was made with traverse to prosecute the invention of the product, claims 1-16. Affirmation of this election must be made by applicant in replying to this Office action. Claims 17-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 2-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which

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applicant regards as the invention. Specifically, it is unclear to what degree "substantially triangular" and "substantially torpedo-shaped" are, respectively, triangular and torpedo-shaped. Appropriate correction is required.

5. Claim 11 recites the limitation "non-perpendicular interior surfaces." There is insufficient antecedent basis for this limitation in the claim. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-6, 8, 10-11, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Worsell (US 1212305) in view of Leatherman (US 3170183). With respect to claim 1, Worsell discloses the following:

- A generally semi-tubular container having a closed bottom end having a substantially circular configuration and an open end having a substantially D-shaped configuration, the container having rounded side walls with a non-rectangular shaped flat side wall portion on the container, as shown in Fig. 1.
- A handle at an apex portion of the D-shaped open end located substantially

midway from the non-rectangular shaped flat side wall portion, as shown in (Fig. 1 item 16)

However, Worsell fails to teach the container being formed of molded plastic. Nonetheless, Leatherman teaches a wastebasket being constructed of molded plastic (Col. 2, Lines 15-20). Molded plastic allows for a lighter and more resilient design. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to construct the container of Worsell of molded plastic as taught by Leatherman so as to provide a lighter and more resilient design.

With respect to claims 2 & 3, to the degree that the claims are understood, Worsell teaches the non-rectangular shaped flat side wall including a substantially triangular configuration and a substantially torpedo-shaped configuration, as shown in Fig. 1.

With respect to claim 4, Worsell teaches the non-rectangular shaped flat side wall including a substantially triangular-tubular configuration, as shown in Fig. 1.

With respect to claim 5, Worsell fails to disclose an angled ramp being disposed along a flat edge portion of the open mouth end of the container. However, Leatherman teaches an angled ramp being disposed along a flat edge portion of the open mouth end of the container, as shown in Fig. 3. Having an angled ramp as such provides a convenient means for collecting refuse. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add an angled ramp being

disposed along a flat edge portion of the open mouth end of the container of Worsell as taught by Leatherman so as to provide a convenient means for collecting refuse.

With respect to claim 6, Worsell fails to disclose an angled ramp including a straight upwardly sloping planar ramp portion. However, Leatherman teaches an angled ramp including a straight upwardly sloping planar ramp portion, as shown in Fig. 3. Having an angled ramp including a straight upwardly sloping planar ramp portion provides a convenient means for collecting refuse. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add an angled ramp including a straight upwardly sloping planar ramp portion to the container of Worsell as taught by Leatherman so as to provide a convenient means for collecting refuse.

With respect to claim 8, Worsell discloses the claimed invention except for the angled ramp including an approximately 24" long flat edge portion. It would have been obvious to one having ordinary skill in the art at the time the invention was made to configure the angled ramp to include an approximately 24" long flat edge portion, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to claim 10, Worsell teaches only non-sharp angled interior surfaces being inside the container so that debris easily slides inside the container towards the closed bottom end, as shown in Fig. 1.

With respect to claim 11, to the degree that the claim is understood, Worsell teaches the non-perpendicular surfaces including only concave curved surfaces, as shown in Fig. 1.

With respect to claim 15, Worsell fails to disclose a container having a holder molded onto an outer sidewall of the container. However, Leatherman teaches a container having a holder molded onto an outer sidewall of the container, as shown in Fig. 1. Having a holder provides a means for storing and holding various yard tools. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add a holder molded to an outer sidewall of the container of Worsell as taught by Leatherman so as to provide a means for storing and holding various yard tools.

8. Claims 7 & 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Worsell in view of Leatherman as applied to claim 1 above, and further in view of Ditzik (US 6520554 B2). With respect to claim 7, Ditzik teaches a sweeping collection device including a rounded blunt tip leading to the straight upwardly sloping planar ramp portion, as shown in Fig. 4, item 10, & Col. 2, Lines 33-38. Having a rounded blunt tip leading to the straight upwardly sloping planar ramp portion allows debris to be easily swept into the container. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add a rounded blunt tip leading to the straight upwardly sloping planar ramp portion of Worsell as taught by Ditzik so as to allow debris to be easily swept into the container.

With respect to claim 9, Worsell discloses the claimed invention except for the angled ramp including an approximately 24" long flat edge portion. It would have been obvious to one having ordinary skill in the art at the time the invention was made to configure the angled ramp to include an approximately 24" long flat edge portion, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

9. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Worsell in view of Leatherman as applied to claim 1 above, and further in view of Frysinger et al. (US 6244458 B1). With respect to claim 12, Worsell discloses the claimed invention except for the container having three handles arranged around the upper curved side portions of the container. However, Frysinger et al. teaches a container having three handles about its upper sidewall portions (Col. 5, Lines 15-20). Having three handles provides a versatile gripping configuration. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide three handles arranged around the upper curved side portions of the container of Worsell as taught by Frysinger et al. so as to provide a versatile gripping configuration.

10. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Worsell in view of Leatherman as applied to claim 1 above, and further in view of Glomski (US 4836394). Worsell discloses the claimed invention except for the container comprising a lid being hingedly attached onto the open end of the container. However, Glomski



teaches a refuse container comprising a lid being hingedly attached onto the open end of the container, as shown in Fig. 1. Having a hingedly attached lid provides an easy-to-use and convenient closing means. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add a hingedly attached lid to the container of Worsell as taught by Glomski so as to provide an easy-to-use and convenient closing means.

11. Claims 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Worsell in view of Leatherman as applied to claim 1 above, and further in view of Grimes (US 2002/0003144 A1). With respect to claim 14, Worsell discloses the claimed invention except for the container comprising at least one wheel snapably mountable to the bottom end of the container. However, Grimes teaches a refuse container having at least one wheel snapably mountable to the bottom end of the container, as shown in Fig. 1 & Page 3, Col. 2, [0059]. Having snapably mountable wheels provides a modular and convenient means for movement of the container. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add at least one wheel snapably mountable to the bottom end of the container of Worsell as taught by Grimes so as to provide a modular and convenient means for movement of the container.

12. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Worsell in view of Leatherman as applied to claim 1 above, and further in view of Haas (US

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5624050). With respect to claim 16, Worsell discloses the claimed invention except for a removable lid having at least one small opening. However, Haas teaches a refuse container having a removable lid having at least one small opening, as shown in Fig. 3. Having a removable lid with at least one small opening provides a modular design and a means to hold various articles and tools. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add a removable lid with at least one small opening to the container of Worsell as taught by Haas so as to provide a modular design and a means to hold various articles and tools.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Lin (US 2004/0020928 A1)

DeMars (US 5611450)

Hahn (US 5560512)

Cann (US 6698058 B2)

Beese et al. (US 5088750)

Asbach et al. (US 5535913)

Ordonez (US 2001/0045371 A1)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene Lhymn whose telephone number is 571-272-8712. The examiner can normally be reached on MTWTh 8:30-7:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**NATHAN J. NEWHOUSE**  
**SUPERVISORY PATENT EXAMINER**